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THE NEW CONSTITUTION OF RUMANIA

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The new Constitution of the People's Republic of Rumania of September, 1952 will in all probability become a landmark in the constitutional history

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of the Soviet world. It is the first document to reconcile the conflict hitherto existing between the satellite constitutions and two Soviet official theories: the one, relating to the essence and character of the "New Democracies," emphasizes in its latest version the substantial identity of the political and economic structures of the two types of "Soviet" and "popular" democracies; the other, the Soviet theory on constitutional law, supports the thesis that there can be no divergence between constitution and society in a "socially advanced and progressive" state. Previous satellite constitutions, however, in contradiction to Soviet legal theory that the constitution is a mirror reflecting changing reality—the legal crystallization of existing arrangements—did not correspond to the fundamental changes occurring in the state.

The new Rumanian Constitution,[1] however, assumes to reflect the enormous transformations that have taken place in the political and socio-economic life of the country since March, 1948, when the first Constitution of the People's Republic of Rumania was adopted. In the interval, the means of production, transportation, and banking have been nationalized; the "socialist sector" of agriculture has been widened by the ever-growing influence of the state through the establishment of state farms ("sovchozi") and tractor stations; collectivization of land has been consistently pursued through a policy aiming at the elimination of the "kulak" elements and the support of the lower and middle strata of the peasantry; two monetary reforms have completely changed the financial status of the population—while the leu has been stabilized and pegged to the ruble, the people have been deprived of their savings; the structure and functions of the central and local governmental agencies and of the judiciary has gradually developed along Soviet lines; the opposition has been eliminated and the rank-and-file of the Communist Party purged of "unreliable" or "deviationist" elements.

The new Constitution, as a whole, very closely approximates to its Soviet prototype. While the Constitution of 1948—advanced as it was at the time from the Soviet legal point of view—preserved some outward manifestations of "bourgeois constitutionalism," particularly in its technique and its neo-latin legal style, the framers of the new Constitution carefully avoided

[1] The new Constitution of the People's Republic of Rumania was adopted by the Grand National Assembly on September 24, 1952. It differed little in substance from the original Draft submitted to the Assembly (March 27, 1952) by the Constitutional Commission headed by Gheorghe Gheorghiu-Dej, President of the Council of Ministers and Secretary-General of the United Workers' (Communist) Party. Out of the 18,836 "suggestions for amendments" offered by the population, only 34 were accepted. Of these 28 were primarily editorial, 2 changed the composition of the Council of Ministers, one stipulated the tax-levying authority of the Grand National Assembly, and one provided for the inclusion of the initials RPR (Rumanian People's Republic) in the country's emblem. Two amendments, however, were more significant. One eradicated the peasantry's personal property rights, granted in the Draft, to the land and farm implements which they brought into the collectives; the other, seeking to dissipate the democratic world's allegations that the country had obviously become a "Soviet province," purports to establish the principle of complete sovereignty by the inclusion of the provision that Rumania is a "unitary, sovereign, and independent" state.

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642 these "antiquated" forms and sancrosanctly adopted the constitutional tenets of Stalinism.[2]

Compared to the earlier document the new Constitution contains certain features which seem to corroborate the complete Sovietization of the country. In fact, were it not for political expediency in the field of foreign affairs, the incorporation of the People's Republic of Rumania into the USSR as a constituent member would be only a matter of sheer formality, necessitating merely the amending of the USSR Constitution.

[648] Short of this final step, however, the new Rumanian Constitution provides, in an almost unique manner in constitutional law, for the freezing of Rumania's foreign policy by incorporating in the text friendship and alliance with the USSR. Whereas the former Constitution completely failed to mention the USSR, the present document refers to the Soviet Union and the Red Army not less than five times. The USSR is depicted as the liberator of the country, whose friendship ensures "the independence, state sovereignty, development, and flourishing" of Rumania (Paragraphs 2 and 4 of the Introductory Chapter and Article 3).

[565] The basic features of the new society are outlined in Chapter I. It defines the People's Republic of Rumania as a "state of the working people of town and countryside" (Article 1). The political foundation of the state is the "alliance of the working class with the working peasantry . . . in which the leading role is held by the working class" (Article 2). Thus, for the first time in a Rumanian constitution, the preponderance of the working class is formally acknowledged. Furthermore, the central strategic position of the Communist Party and its implicit identification with the state is, as in the USSR, legally declared (Article 86). In fact, notwithstanding the discrepancies existing between the constitutions of the people's republics, their main difference from the Stalin Constitution has thus far concerned the legal position of the Party. Whereas Article 126 of the USSR Constitution openly refers to the Party as the vanguard in "the struggle to strengthen and develop the socialist system," the satellite constitutions typically make no mention of its role. The Hungarian Constitution of 1949, which until lately was considered as the most advanced, faintly refers to it in Article 56. In reference to the right of organizing, this Article asserts that the state "in fulfilling its tasks . . . bases itself . . . on the working class, led by its *advanced guard* (emphasis supplied) and supported by the democratic unity of the whole people." Even the new Polish Constitution of 1952 fails to acknowledge the exclusive role of the Communist Party. Although the provisions of Article 72 have merely theoretical importance, as

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642 [2] In fact, all component chapters of the Constitution proper—the Social Structure, the Supreme Organ of State Power, the Organs of State Administration, the Local Organs of State Power, the Courts and the Prosecutor's Office, the Fundamental Rights and Duties of Citizens, the Electoral System, the Arms, Flag and Capital of the Rumanian People's Republic and the Procedure for Amending the Constitution—have an equivalent in the Soviet Constitution. Indeed, some of the articles have been copied verbatim.

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in practice no open opposition is permitted in Poland, they nevertheless "legalize" the existence of other political organizations.

The constitutional legalization of the Communist Party's exclusive control of state power in Rumania is based on the contention that with the complete eradication of the active opposition in the country the Party no longer needs to hide under the paraphernalia of tactical secrecy. The Party's "legal" control of the state apparatus is assured by its exclusive right to nominate candidates in the elections of deputies to the Grand National Assembly (Article 100). This control is further facilitated by the provisions of the new Electoral Law restricting the right of certain groups of people considered inimical to the regime to participate in the national elections. In this respect, the 1936 Constitution of the USSR (Article 135) is more liberal; it removed all discriminatory provisions—religious, economic, and political—formerly applied against non-Bolsheviks. This distinction is based on the supposition that, unlike the USSR, Rumania as well as the other popular republics, advanced as they are, are still in the presocialistic stage of development, which necessitates an incessant waging of the class-struggle against the "enemies of the working class."

Theoretically, the people exercise their power through duly elected organs, the Grand National Assembly and the People's Councils. These, in turn, appoint the necessary administrative and judiciary bodies, the Presidium, the Council of Ministers, the higher echelon of the judiciary, and the Executive Committees of the People's Councils respectively. Though the constitutional theory of exclusive legislative power in the Grand National Assembly is constantly maintained, Soviet and satellite legislative history reveals the preponderance of the Council of Ministers. While the Council is formally appointed by, and theoretically subordinate to, the Grand National Assembly, its members in reality are chosen by the Central Committee of the United Workers' (Communist) Party from among its leading functionaries. The primary function of the Council of Ministers is to effectuate the policies of the Party through the vast bureaucratic apparatus it controls; that of the Grand National Assembly is the ratification of governmental decrees.

Justice in the People's Republic of Rumania, according to the new Constitution, is administered by the Supreme Court, the Regional Courts, the People's Courts, and the Special Courts. Their main function is the defense of the political regime and the protection of communal property and of the rights of citizens (Article 65). Unless otherwise provided for by law, all judicial cases are tried with the participation of people's assessors (Article 66).

The supreme supervisory power over the observance of law by all central and local governmental organs of state power and administration as well as by all officials and citizens is vested in the Procurator General of the Rumanian People's Republic (Article 73). He is appointed by the Grand National Assembly for a term of five years, and he in turn, appoints his deputies and the procurators of the local units for a term of four years (Article 74). Whereas the organs of the Procurator's Office are independent of all local governmental

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693 agencies, being subordinate only to the Procurator General, the latter is
642 responsible to the Grand National Assembly, and in the interim between its sessions, to the Presidium (Article 75).

[671] The powers and functions of the Procurator General are specified by Law No. 6 of June 2, 1952, concerning the "Setting up and Organization of the Procuratura of the Rumanian People's Republic." The Procurator General has the right to take part, "with a consultative vote," in the meetings of the Presidium and of the Council of Ministers (Article 4). He is empowered to see to it that the decisions and rules issued by the central and local agencies of state power and administration conform with the laws of the country. Charged with the administration of justice, he supervises the activities of the agencies of penal investigation; he may ask for the dossier at any stage of the investigation, and has the right to "issue compulsory instructions with regard to the development of penal investigation and inquiry and to be present at any act of penal investigation or to carry it out himself" (Article 7, Paragraph a).

642 The Supreme Court, whose chief function is the supervision of the judicial
692 activities of all the courts (Article 72), is elected by the Grand National Assembly for a term of five years (Paragraph 1 of Article 67). The judges, theoretically independent and subject only to the law (Article 70), and the people's assessors are elected in accordance with the provisions of a special law (Paragraph 2 of Article 67). All judicial proceedings are conducted in the Rumanian language, with special provisions for the use of other languages in areas inhabited by compact groups of other nationalities or minorities. Persons not knowing the language in which the judicial proceedings are conducted are constitutionally guaranteed the right to acquaint themselves with the material of the case and the privilege to use their own language in the summation of their case (Article 68).

Unlike the Supreme Court of the United States, the Supreme Tribunal of the People's Republic of Rumania, like its Soviet counterpart, has no power of constitutional interpretation and is more of an auxiliary than an independent branch of government.

177. The constitutional provisions regarding the administration of justice, how-
69 ever "progressive" they may sound, conceal the true nature of the Marxist-
692 Leninist concept of justice, which has been adopted by the People's Republic of Rumania as well as by the other countries in the Soviet orbit. The modern principles of penal law (*"nullum crimen sine lege; nulla poena sine lege"*) applied and observed in all civilized countries, have been replaced by the concept of "class-justice." Marxist doctrinaires assert that the purpose of "proletarian class justice" is the maintenance of the regime of the dictatorship of the working class and the complete elimination of all "reactionary" and "anti-democratic" elements.

Although the principle of "class-justice" has not been embodied in the two Rumanian constitutions framed under the regime of popular democracy, it nevertheless has found clear expression in Law No. 5 passed by the Grand

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National Assembly on June 2, 1952, concerning the "Organization of the Judicature." Article 1 of the Law emphatically states that the function of the judiciary is the defense of the socio-economic structure of the state and of the rights and interests of state institutions and organizations. Furthermore, it is emphasized that the aim of the judiciary is the "education" of the citizens "in the spirit of devotion to the fatherland and in the spirit of the construction of socialism" (Article 2).

The people's assessors perform in practice a much greater function in judicial proceedings than those specified by the Constitution. The Minister of Justice is authorized to detail them from one court to the other whenever circumstances require. Thus, there are actually special teams of "people's judges" which the Ministry of Justice can use in accordance with the political interests of the Party.

Article 9 of Law No. 5 of 1952 also authorizes the courts to hear cases outside their seats if this is required "to fulfil the educational purpose of justice." Furthermore, hierarchically superior courts may take away from subordinate courts any case "in order to hear it themselves or have it heard by another court."

The required impartiality of judges is furthermore impaired by limitations imposed by the electoral laws on the right to participate in the election of people's judges. The privilege is restricted to the "democratic" elements only (Article 13, Paragraph 7, of Law No. 5). This is coupled with the provisions confining the nomination of candidates to the United Workers' (Communist) Party or to its affiliated mass organizations (Article 13, Paragraph 1).

In discussing the new role of justice and law, Vasilescu-Alba, a jurist of the Rumanian People's Republic, asserted that "all legal rules, being the expression of the will of the working class, must be understood and interpreted in the light of the class struggle." Justice is thus "an executive organ of the will of the working class." Positive law, when in disagreement with this principle, must make room for the "legal conscience of the proletariat."[3]

The fundamental rights and duties of citizens are enumerated in a special chapter. The primacy of social rights over individual rights is, as in the USSR, both functional and political.[4] Most of the rights and freedoms stipulated by the Constitution are either programmatic, circumscribed by escape clauses, or outright illusory. Thus, for instance, the provision relating to freedom of the press, speech, and assembly, as stated by Article 85, (a word-by-word replica of Article 125 of the Soviet Constitution of 1936), emphatically denies

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[3] "Statul Poliţienesc" Cronica Românească, October 1, 1950, p. 25.

[4] Professor Boris Mirkine-Guetzevitch, while recognizing the dictatorial character of all the constitutions in the Soviet sphere, makes nevertheless a distinction between the declarations of rights of the Soviet constitutions and those of the satellite constitutions. According to Professor Mirkine, whereas the declarations of the People's Republics establish the "functional" primacy of social rights over individual rights, those of the Soviet republics establish "political" primacy. See Boris Mirkine-Guetzevitch, Les Constitutions Européennes, 2 vol. Paris, 1951.

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641 the right and freedom of citizens to write, publish, or otherwise express their views, except such as are in accord with the given party-line. For the exercise of this right, the state places at the disposal of the "working classes and their organizations, printing presses, stocks of paper, public buildings, the streets (and) communication facilities." Freedom of speech is furthermore restricted by the provisions of the Law for the Defense of Peace enacted on December 15, 1950. Article 2 of this Law specifically prohibits "propaganda inciting to war, the spreading of tendentious or invented news, of a nature to serve the warmongers, etc. . . ."

[204] Freedom of the press and publication is likewise nonexistent. Two directorates attached to the Council of Ministers are charged with complete supervision over the press, publications of any sort, and their distribution. The Directorate of the Press and Printed Matter, established on May 23, 1949 (Decree No. 218) "authorizes the publication of all printed matter;" the General Directorate of Publishing, Graphic Arts Industry, Book and Press Distribution, established on March 16, 1950 (decree No. 62), "controls the output of publishing houses from the point of view of contents and form." The Communist press is furthermore restricted to the services of the AGERPRESS (the Rumanian Press Agency) which by virtue of Decree No. 217 of May 23, 1949, is the only agency permitted to receive and transmit news. Aside from the nationalization of all printing presses, a governmental decision (Decision No. 69 of the Ministry of the Interior, July 1, 1950) requires the registration with the militia of all hand printing presses, duplicating machines, and "materials needed for the reproduction of printed matter," owned by individuals or associations.

[575] Freedom of assembly is similarly controlled. Excepting the Communist-controlled mass organizations, viz., public organizations, co-operative societies, youth and women's organizations, etc. (Article 86), no independent organization or association is permitted. Anyone attempting to organize or participate in such an organization is liable to prosecution by virtue of Article 86 of the Constitution, prohibiting the organization of or the participation in associations of a "fascist" or "anti-democratic" character. Such participation would furthermore entail "plotting against the internal and external security" of the state, an offense punishable by death under Article 1 of the Law for Punishing Certain Crimes Which Endanger the Security of the State of January 19, 1949.

641 The right to work is guaranteed by the "socialist transformation" of
461 the economy and the "elimination of the possibility of economic crises and the abolition of unemployment" (Article 77). The right to rest and leisure is ensured by the reduction of the working hours to eight in factories and offices and to less in the more arduous trades.[6] This right is supplemented by

[6] The constitutional provisions relating to the reduction of working hours are puzzling in the light of the introduction of the piece-work system and norms of production (Labor Code of May 20, 1950) and the adoption of the Soviet model of "Stachanovism" and "voluntary labor."

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the establishment of rest-homes, sanatoria, and cultural establishments (Article 78). The right to maintenance in old age and in case of sickness or disability is ensured by the development of social insurance and free medical service (Article 79). The right to education is ensured by universal, compulsory, and free elementary education and by the system of state scholarships awarded to deserving students (Article 80).[6] Equality of rights in all spheres of economic, political, and cultural activity is guaranteed to all citizens irrespective of their nationality, sex, or race. Any transgression of these provisions by the manifestation of race-hatred, chauvinism, or discrimination is punishable by law (Article 81).[7]

Some distinction was made at the beginning with regard to the German ethnic group, which had actively collaborated with Nazi Germany. The original decision to expel the Germans from the country, however, was officially changed in December, 1948, when the Rumanian Communist Party decided to replace the denunciation of the German minority as a whole and encourage instead the class struggle within its ranks. The resolution of the Party maintained that the "struggle against their own bourgeoisie . . . (would) open a new perspective to the German working population of Rumania, working alongside the Rumanian people and other nationalities."[8]

Whereas at the beginning Zionism enjoyed a tremendous popularity and even received latent, if not active, support from the Communist-dominated government during the Jewish-Anglo-Arab disturbances in Palestine, the above quoted resolution on the national question also declared:

"Zionism of any color is a political nationalist and reactionary movement of the Jewish bourgeoisie, which tries to isolate the Jewish working people from the other peoples and to hinder them in their struggle against capitalism in the ranks of the anti-imperialist camp."

Notwithstanding the legal and constitutional provisions relating to the defense of the rights of nationalities and minorities,[9] the official policies of the Communist Party in regard to these questions have been based on the tenets of Leninism-Stalinism. While the development of national cultures and the use of national languages in all the fields of cultural and political endeavors are encouraged, the guiding principle is that of "socialism." "Na-

[6] The system of education underwent drastic changes. See "The Perversion of Education in Rumania" published by the Rumanian National Committee, Washington, D.C., July, 1950.

[7] See Law No. 86 of February 7, 1945 (Statute for Nationalities) and Law No. 630 of August 6, 1945, in the Yearbook on Human Rights for 1946, United Nations, (1947) 248–49 and 249–51, respectively.

[8] La Roumanie Nouvelle, Bucharest, No. 14, December 30, 1948.

[9] As an apparent concession to the Hungarian minority in Rumania, the Constitution also provides for the establishment of a Magyar Autonomous Region (Articles 19–21) in the territory inhabited by compact Magyar and Székely population, including the districts of Ciuc, Gheorgheni, Odorhei, Reghin, Sangiorgiu de Padure, Sft. Gheorghe, Targu-Mures, Targu-Secuesc and Toplita.

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641 563 tional culture" from the Leninist-Stalinist point of view is a culture *national only in form* and *socialist in content* and aims at the consolidation of the dictatorship of the proletariat.[10]

In fact, this principle has been legally formulated in Paragraph (j) of Article 17 of the new Rumanian Constitution according to which the state

> "ensures the development of the culture of the Rumanian people and of the culture of the national minorities, *socialist in content, national in form.*" (emphasis supplied)

641 [563] Women are given equal rights with men in all spheres of cultural, economic, or political activities. The institution of marriage and the family is protected by the state, which grants aid to mothers of large families and unmarried mothers (Article 83). Freedom of conscience and religious worship is guaranteed. The school is separated from the church; except for the training of the personnel of the religious denominations, no congregation may open or maintain [798] institutions of general study (Article 84). The constitutional provisions relating to freedom of conscience are rendered practically meaningless by virtue of Decree No. 177, Establishing General Regulations for Religious Cults, of August 3, 1948, and the Law on the Organization of the Ministry of Cults, of February 5, 1949. According to the Decree, all religious cults must be recognized by the Presidium, which must approve the statute of organization of the respective cult. The Ministry of Cults, the organ through which the Party exercises its control over religious denominations, is empowered to "supervise and control all religious cults and their institutions, and the special religious education for the training of all personnel of religious cults, the property and funds of any nature belonging to cults, as well as to confirm (or deny) the appointment of the entire permanent and temporary staff of religious cults, and to act as intermediary for relations and exchanges of information between cults in the country and abroad" (Article 1 of the Law for the Organization of the Ministry of Cults). The implementation of these provisions has resulted in the unequivocal subserviency of the cults to the regime.[11]

641 The inviolability of the home, the privacy of correspondence (Article 88) and of the citizen is guaranteed. No person may be placed under arrest without the decision of a court or "of the procurator" (Article 87). This assurance of the inviolability of the person is subject to the exclusive privilege of the Party or of its affiliated organizations to nominate candidates in the election of judges and the arresting power of the Prosecutor General, which is independent of the courts. Since there can be no writ of habeas corpus against the Procurator General—always a loyal servant of the Party—it evidently follows that extrajudicial arrest of any individual is within his discretion (see Article 8 of Law No. 6 of June 2, 1952).

Hand-in-hand with the rights enumerated above, the Constitution specifies

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[10] J. Stalin, Marxism and the National Question (1942) 207.

[11] For details see "Persecution of Religion in Rumania" published by the Rumanian National Committee, Washington, D. C., 1949.

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the following duties of the citizens. It is the duty of every citizen to: abide by the constitution and the laws in force; safeguard and develop public socialist property; maintain labor discipline; actively contribute to the strengthening of the power of people's democracy; further the economic and cultural advancement of the country (Article 90); serve in the Armed Forces (Article 91); and defend the fatherland (Article 92).

The only international connotation in the Constitution is the provision of a "right of asylum" accorded to "foreign citizens persecuted for defending the interests of the working people" (Article 89).

Whatever the merits or shortcomings of this Constitution, it should be borne in mind that a "people's democracy," like the Soviet state, is not a legal state in the true sense of the word. Such constitutions are not truly fundamental laws, in the sense that they do not define or limit the powers of the state and protect rights of the citizens against arbitrary governmental actions. They are not based upon a compromise embodied in rules of law to which all citizens, irrespective of their ideological conceptions or political affiliations, are equally subject. In Marxian terminology, the Soviet state (like that of the People's Republics) is a "class-state," a class dictatorship. The misleading fallacy, however, lies—as the Soviet experience of the last 36 years and the satellite experiences of the last few years show—in the complete identification of the working class with the Communist Party and of the Party itself with its hierarchy.

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